

Protect your contracting status by building an IR35 compliance file

Should HMRC start an [investigation](#) into your contracting career and [IR35](#) status history, comprehensive, well organised and accurate business records could make the difference between you winning or losing a case.

It could also make the difference between a quick and straightforward investigation that HMRC will take no further, and a full investigation that could lead to a judgement against you and a court case.

By creating and maintaining an IR35 compliance file for every contract, contractors can present all the evidence needed to quickly and conveniently prove their IR35-compliant status, without having to search back through years of records.

Contracts not enough

Ideally, a contractor's contract should confirm their status as being outside of IR35 by containing key clauses, such as an unfettered [right of substitution](#), and the rights to perform the work at any location and at hours to suit the contractor.

However, not only do typical contracts rarely read like this, but HMRC can decide that the contract is irrelevant anyway. By looking into how the real-life working practices of the contractor and the client, HMRC can overlook the actual contract to create a 'notional' one that demonstrates that the contractor was a de facto employee.

HMRC will look for every opportunity to justify its inspection by claiming back-taxes, National Insurance Contributions (NICs) and penalties, so investigators will want to go through a contractor's trading history in minute detail, going back as far back as six years.

When to start an IR35 compliance file

At the start of each contract, the contractor should create a simple file, using either a hard copy kept in a filing cabinet in their office at home or, if electronic files and scans are preferred, on their PC or laptop used in the home office. The basic contents of each file should include:

- o A copy of the final signed contract between the contractor and the agency or end-user client
- o Notes of any key conversations relating to contract negotiations with the agent or end-user client, to ensure the contract has all the relevant IR35 friendly clauses
- o Notes of the interview, particularly if they relate to hours worked, location and so on that suggest the contractor would not be controlled by the client on the contract
- o Copies of correspondence and details of advice from professional advisers who have reviewed the contract, including any telephone conversation or meeting notes
- o A copy of the 'upper level contract' between the agency and the end-user client, if it is possible get this from the agency
- o Copies of all timesheets and invoices throughout the duration of the contract.

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What additional records to include

To add weight to the file if it is later required for an IR35 defence, or if the contractor may be unable to negotiate the contract to be fully IR35 compliant, then adding additional evidence can be invaluable.

In each case, the contractor should attempt to include:

- o A signed [confirmation of arrangements letter](#) with the client
- o Proof that the contractor's own equipment has been used for the project, by, for example, taking a laptop to the client's site and sending emails showing it is being used there
- o Evidence that the contractor can work away from the client's site, by getting their project manager to let them do some of the work from their home office, and ensuring that an email record shows this is taking place
- o A paper trail confirming the right of substitution, which is a very important proof of being outside IR35, and the contractor should send the client or the agent emails about this. If there is a reply, that may prove extremely useful. Any other proof of that kind, like letters or notes from the agent or client could help too
- o Any proof the contractor can get that they've paid their own expenses. Not just receipts, but also any requests for materials needed from the client, emails asking the contractor to pay expenses and so on.

- o At the end of each contract, or renewal period, the contractor should ensure all the records are in a dated file and stored secured in an easy to retrieve location, preferably at their home office.

‘Reasonable care’

Guidance from HMRC now [requires contractors to demonstrate ‘reasonable care’](#) when claiming they are outside IR35, as they will incur a penalty if a ‘careless inaccuracy’ is found in any documentation.

A well organised IR35 compliance file for each contract demonstrates the contractor has taken an element of reasonable care in determining their own IR35 status.

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